

by any other means that can reasonably be expected to indicate to the Board that the other party has been provided a copy.

(c) *Failure to make service.* If a document sent to the Board by a party does not indicate that a copy has been served on the other party, the Board may return the document to the party that submitted it with such directions as it considers appropriate, or the Board may inquire whether a party has received a copy and note on the record the fact of inquiry and the response, and may also direct the party that submitted the document to serve a copy on the other party. In the absence of proof of service a document may be treated by the Board as not properly filed.

#### 6101.4 Appeal file [Rule 104].

(a) *Submission to the Board by the contracting officer.* (1) Within 30 calendar days from receipt of notice that an appeal has been filed, or within such time as the Board may allow, the contracting officer shall file with the Board appeal file exhibits consisting of all documents and other tangible things relevant to the claim and to the contracting officer's decision which has been appealed, including:

- (i) The contracting officer's decision, if any, from which the appeal is taken;
  - (ii) The contract, if any, including amendments, specifications, plans, and drawings;
  - (iii) All correspondence between the parties that is relevant to the appeal, including the written claim or claims that are the subject of the appeal, and evidence of their certification, if any;
  - (iv) Affidavits or statements of any witnesses on the matter in dispute and transcripts of any testimony taken before the filing of the notice of appeal;
  - (v) All documents and other tangible things on which the contracting officer relied in making the decision, and any correspondence relating thereto;
  - (vi) The abstract of bids, if relevant; and
  - (vii) Any additional existing evidence or information deemed necessary to determine the merits of the appeal.
- (2) The contracting officer shall serve a copy of the appeal file on the appellant at the same time that the con-

tracting officer files it with the Board, except that

(i) The contracting officer need not serve on the appellant those documents furnished the Board *in camera* pursuant to 6101.12(h), and

(ii) The contracting officer shall serve documents submitted under protective order only on those individuals who have been granted access to such documents by the Board. However, the contracting officer must serve on the appellant a list identifying the specific documents filed *in camera* or under protective order with the Board, giving sufficient details necessary for their recognition. This list must also be filed with the Board as an exhibit to the appeal file.

(b) *Submission to the Board by the appellant.* Within 30 calendar days after filing of the respondent's appeal file exhibits, or within such time as the Board may allow, the appellant shall file with the Board for inclusion in the appeal file documents or other tangible things relevant to the appeal that have not been submitted by the contracting officer. The appellant shall serve a copy of its additional exhibits upon the respondent at the same time as it files them with the Board.

(c) *Submissions on order of the Board.* The Board may, at any time during the pendency of the appeal, require any party to file other documents and tangible things as additional exhibits.

(d) *Organization of the appeal file.* Appeal file exhibits may be originals or true, legible, and complete copies. They shall be arranged in chronological order within each submission, earliest documents first; bound in a loose-leaf binder on the left margin except where size or shape makes such binding impracticable; numbered; tabbed; and indexed. The numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. In addition, the pages within each exhibit shall be numbered consecutively unless the exhibit already is paginated in a logical manner. Consecutive pagination of the entire file is not required. The index

## GSA Board of Contract Appeals

## 6101.5

should include the date and a brief description of each exhibit and shall indicate which exhibits, if any, have been filed with the Board *in camera* or under protective order or otherwise have not been served on every other party.

(e) *Lengthy or bulky materials.* The Board may waive the requirement to furnish other parties copies or duplicates of bulky, lengthy, or outsized materials submitted to the Board as exhibits.

(f) *Use of appeal file as evidence.* All exhibits in the appeal file, except for those as to which an objection has been sustained, are part of the record upon which the Board will render its decision. Unless otherwise ordered by the Board, objection to any exhibit may be made at any time before the first witness is sworn or, if the appeal is submitted on the record pursuant to 6101.11, at any time prior to or concurrent with the first record submission. The Board may enlarge the time for such objections and will consider an objection made during a hearing if the ground for objection could not reasonably have been earlier known to the objecting party. If an objection is sustained, the Board will so note in the record.

(g) *When appeal file not required.* Upon motion of a party, the Board may postpone or dispense with the submission of any or all appeal file exhibits.

### **6101.5 Filing cases; time limits for filing; docketing [Rule 105].**

(a) *Filing cases.* Filing of a case occurs as provided in 6101.1(b)(5).

(1) *Notice of appeal.* (i) A notice of appeal shall be in writing and should be signed by the appellant or by the appellant's attorney or authorized representative. If the appeal is from a contracting officer's decision, the notice of appeal should describe the decision in enough detail to enable the Board to differentiate that decision from any other; the appellant can satisfy this requirement by attaching to the notice of appeal a copy of the contracting officer's decision. If an appeal is taken from the failure of a contracting officer to issue a decision, the notice of appeal should describe in detail the claim that the contracting officer has failed to decide; the appellant can satisfy this

requirement by attaching a copy of the written claim submission to the notice of appeal.

(ii) A written notice in any form, including the one specified in the appendix to this part and part 6102, is sufficient to initiate an appeal. The notice of appeal should include the following information:

(A) The number and date of the contract;

(B) The name of the agency and the component thereof against which the claim has been asserted;

(C) The name of the contracting officer whose decision or failure to decide is appealed and the date of the decision, if any;

(D) A brief account of the circumstances giving rise to the appeal; and

(E) An estimate of the amount of money in controversy, if any and if known.

(iii) The appellant must send a copy of the notice of appeal to the contracting officer whose decision is appealed or, if there has been no decision, to the contracting officer before whom the appellant's claim is pending.

(2) *Petition.* (i) A petition shall be in writing and signed by the petitioner or by the petitioner's attorney or authorized representative. The petition should describe in detail the claim that the contracting officer has failed to decide; the contractor can satisfy this requirement by attaching to the petition a copy of the written claim submission.

(ii) The petition should include the following information:

(A) The number and date of the contract;

(B) The name of the agency and the component thereof against which the claim has been asserted; and

(C) The name of the contracting officer whose decision is sought.

(3) *Application.* An application for costs shall meet all requirements specified in 6101.35(c).

(4) *Other participation.* The Board may, on motion, in its discretion, permit an entity to participate in a case in a special or limited way, such as by filing an *amicus curiae* brief.

(b) *Time limits for filing—(1) Appeals.*

(i) An appeal from a decision of a contracting officer shall be filed no later